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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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Vol. 15

April 28, 1998

No. 16

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## WEEK IN REVIEW

### HOUSE

The House of Representatives amended and sent to the Senate H.4821. This bill prohibits the impersonation of a state or local official or employee or a law enforcement officer in connection with a sham legal process, or the false assertion of authority of state law in connection with a sham legal process. A person may not act without authority under state law as a judge or other authorized official in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law. As amended, the bill states that violators would be guilty of a misdemeanor and, upon conviction, must be fined up to \$2,500 and/or imprisoned up to one year. The bill also prohibits a person from falsely asserting authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of sham legal process. Violators would be guilty of a felony and, upon conviction, must be fined not more than \$10,000 and/or imprisoned from 1 to 3 years. The amendment also added a civil cause of action for people injured by a sham legal process. The injured person would be entitled to actual and punitive damages, costs, and reasonable attorney's fees.

The House amended and sent to the Senate H.4933. This bill provides that if a school district is unable to employ a sufficient number of foreign language teachers for its elementary or secondary foreign language programs, the State Board of Education may grant a waiver to that district which will permit it to employ foreign nationals to teach their native or acquired language in the schools of the district for a maximum of three years. The bill requires that these foreign nationals must have appropriate work clearances and must meet all requirements for SC teacher certification except that they are not required to be US citizens nor are they required to meet current requirements for examination regarding the provisions of the US Constitution and their loyalty thereto. The House amended the bill by adding a provision that these foreign nationals must meet all requirements for teacher certification *prior to employment* and adding a provision that the State Department of Education must promulgate regulations for the implementation of these provisions. The House also amended the bill to provide that the teachers in question must be proficient in the English language prior to employment. The House also amended the bill to provide that before a vacancy may be filled under these provisions, the district must advertise the position and otherwise document attempts to fill the position with a noncertified, but otherwise qualified foreign language teacher who is an American citizen. The House also amended the bill to provide that no public funds, including school activity funds, ~~may be used to travel to foreign countries to recruit~~ foreign nationals to teach their native or acquired language in a district.

The House sent H.5056 to the Senate. This bill authorizes a mutual insurance company to form holding companies and sell shares for a stock company subsidiary. Under the legislation, a mutual insurer could reorganize as two new companies: a holding company and a stock



insurance company, which would operate together. In such an arrangement, the holding company, comprised of policy holders, could not issue stock, but would own a majority of the voting shares in the stock insurance company. The stock insurance company would be authorized to raise capital by selling a minority interest of its voting stock. Should a mutual insurer reorganize as provided in the bill, officers, directors and employees are prohibited from purchasing stock in the reorganized company for six months. Under current law, a mutual insurer cannot sell stock.

The House sustained the Governor's veto on H.4644, a joint resolution requiring the State to set aside \$1,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases.

The House amended and returned S.284 to the Senate. As amended, this bill requires the Secretary of State to monitor all elected or appointed state boards and commissions and to publicize vacancies, expired terms, and those terms expiring within one year on a semiannual basis statewide. The amended bill also devolves the duties, functions, and responsibilities of the Public Charities Section of the office of the Attorney General upon the Secretary of State's office on July 1, 1998. All personnel originally transferred from the Secretary of State's office and still employed by the Attorney General in the Public Charities Section, appropriations, and full-time equivalent positions of the Public Charities Section also would be transferred to the Secretary of State's office on July 1, 1998.

The House amended and sent to the Senate Joint Resolution H.3714 which authorizes, for fiscal year 1997-98 only, that the Office of Indigent Defense to use up to five hundred thousand dollars from the Death Penalty Trial Fund to pay fees and expenses of private counsel appointed in noncapital cases, if the Conflict Fund has been exhausted.

The House amended and sent to the Senate H.3714 which authorizes a court, upon granting a final judgement of divorce or an order of separate maintenance, to allow a party to resume a former surname or the surname of a former spouse.

The House returned S.278 to the Senate with amendment. This bill adds and amends several provisions relating to ill treatment and abandonment of an animal. The bill amends the definition of an "animal," to include all living vertebrate creatures except humans. A definition is added for "sustenance" and "shelter." The bill allows a person who had allegedly disobeyed animal treatment laws to be heard in either magistrate's or municipal court (Now, all animal abuse cases are tried in magistrate's court). The phrase "necessities of life" is amended to delete the requirement that an owner must provide clean, fresh, and potable water at least once daily. The bill establishes the process by which a neglected or mistreated animal can be removed from its present custody and given protection until an appropriate disposition is made. If an animal owner or guardian is convicted of mistreatment, that person forfeits ownership or custody of the animal. The court is given the discretion to order that person to pay costs incurred to care for the animal and other related expenses. The House adopted an amendment that strikes section 5 and 6 of the bill. Section 5 mandates that any company transporting an animal must not overload the vehicle and not confine the animal for a period longer than 24 consecutive hours. Section 6 makes technical changes relating to the care of an animal while being unloaded during transit.



The House returned S.992 to the Senate with amendment. This bill adds a section to the *SC Code* regarding the payment and collection of tolls. The bill provides that if a vehicle drives through a turnpike facility without payment of the required toll, the owner and operator of the vehicle is liable to the Department of Transportation (DOT) to pay the required toll, administrative fees (maximum amounts are specified in the bill), and civil penalty as provided in the bill; and the DOT may enforce the collection of the toll as provided in the bill. The bill specifies procedures and timelines which must be followed by the DOT and by county magistrates and municipal courts in the event of single and multiple toll violations, including provisions for determining that the person or entity charged is liable, and the magistrate or municipal court's authority to collect the unpaid tolls and administrative fee and forward them to the DOT or its agent. The court may also impose a specified civil penalty, plus court costs and attorney's fees. The bill also makes provisions for toll violations when the violating vehicle has been reported as stolen, when the violating vehicle was leased to an entity other than the owner, and when the violating vehicle was operated by someone other than the owner. The bill also provides for setting up and for payment of electronic toll collection accounts. The bill exempts from the payment of tolls public school buses transporting public school children for a school event. The House amended the bill by deleting the word "public" so as to provide that school buses transporting school children for a school event are exempt from payment of tolls. The House also struck a provision allowing retroactive application for compliance with the provisions of the bill.

The House amended and sent to the Senate H.4884. This bill would allow a lobbyist's principal to provide items such as lodging and meals to legislators who are members of the South Carolina delegation attending a national or regional legislative meeting.

The House amended and sent to the Senate H.4689 which revises the Safe Drinking Water Act. The bill amends and revises definitions relating to water supply and the public water system and amends several statutes to conform to the revised definitions. Classification groups for all public water systems are also revised. Under the Act, DNR is authorized to collect an annual fee from each public water system to implement the state and federal Safe Drinking Water Acts. The amendment approved by the House provides that the schedule for the annual fee may not be increased except in accordance with the Administrative Procedures Act. If the General Assembly appropriates additional funds to implement the federal Safe Drinking Water Act, DNR is authorized to adjust the fee schedule by an equivalent amount.

The House amended and sent to the Senate H.4886 which requires the Department of Natural Resources (DNR) to promulgate regulations to allow upper limb handicapped persons to use a crossbow to hunt deer in game zones 1, 2, and 4 during seasons when archery tackle may be used. The committee proposed an amendment that rewrites the bill. The amendment defines "archery equipment," a "bow and arrow," a "crossbow," and an "upper limb disability." The amendment authorizes the use of a crossbow *statewide* by an upper limb handicapped person who has in their possession a written statement certifying the disability. The statement must describe the disability and state that the handicapped person is not capable of operating archery equipment or a bow and arrow. A copy of the statement must be provided to DNR prior to hunting with a crossbow.

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The House amended and sent to the Senate H.4453. Currently, to hunt or shoot doves over a baited area is illegal. This bill creates the misdemeanor crime of unlawfully baiting a dove field. Violators are subject to fines of between \$50 and \$100 or 30 days imprisonment. The amendment adopted by the House changes the word "dove" to "migratory birds" and increases the fines for violation to between \$200 and \$500.

The House adopted and ordered enrolled for ratification S.1185. Watercraft powered by an outdrive or inboard motor with an engine of automotive horsepower rating in excess of 190 horsepower are restricted on Lake William C. Bowen in Spartanburg (with certain exceptions). This bill excludes from those restrictions any Coast Guard inboard boat designed by the manufacturer for towing water skiers with the motor located near the midpoint of the boat between the bow and stern, that is propeller driven by a single rod shaft extending through the hull with the propeller located under the boat in front of a rudder.

The House adopted and sent to the Senate Concurrent Resolution H.5057 which requests the Department of Transportation to name the interchange at the intersection of Interstate 385 and US Highway 221 in Laurens County in honor of Representative Eugene C. Stoddard.

### SENATE

The Senate recommitted S.22 (concerning the State's Freedom of Information Act) to the Senate Judiciary Committee. The bill had been returned to the Senate by the House with several amendments (see last week's Legislative Update - April 14, 1998).

The Senate gave third reading and sent to the House the following bills: S.1013, which would enact the Southern Interstate Dairy Compact; S.603, providing for certain kayaking and canoeing liability immunity; S.1163, relating to the distribution of the annual jail and prison inspection report; S.1167, which would enact the S.C. Electronic Commerce Act; S.757, which provides that electors of a special purpose district may petition for a referendum on the question of whether the board of commissioners of the special purpose district should be elected; and S.1157, which devolves the duties of the Division of Public Charities of the office of the Attorney General upon the Secretary of State's office on August 1, 1998.

### HOUSE COMMITTEE ACTION

#### AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

The full House Agriculture, Natural Resources and Environmental Affairs Committee did not meet this week.



## EDUCATION AND PUBLIC WORKS

The House Education and Public Works Committee gave a favorable report to **S.1070**. This bill provides that no person may tender or interchange a vehicle for use on any highway, which is in violation of requirements of the US Department of Transportation Federal Motor Carrier Safety Regulations (FMCSR). The bill also allows the Department of Public Safety (DPS) State Transport Police, under certain conditions, to enter upon, and perform courtesy inspections of vehicles for certain purposes before these vehicles are tendered for use on public highways. The bill also requires that, if a vehicle that is tendered is placed out of service due to a roadside inspection within five complete working days from the time the motor carrier is tendered the vehicle as indicated on the equipment interchange agreement, then the operator must be reimbursed for all fines and penalties incurred due to the out-of-service order, including reimbursement for certain expenses necessary to bring the vehicle into compliance with the FMCSR. The bill requires that reimbursement must be made to the operator within thirty days after the date of conviction, and the bill specifies equipment repairs for which payment must be included. The bill requires that the DPS develop and maintain a separate database, to be used for purposes specified in the bill, on roadside vehicle inspection reports for power unit defects on any vehicle tendered to the motor carrier.

## JUDICIARY

The House Judiciary Committee amended and gave a favorable recommendation to **S.174**. This bill requires the Department of Public Safety to suspend the driver's license of a person under the age of 21 who drives a motor vehicle and has an blood alcohol concentration (BAC) of .02 or more. If a person under age 21 refuses to submit to a chemical test, the Department of Public Safety must suspend his license for 6 months (or for one year if the person within the five years preceding the violation of this section, has been convicted of DUI). If a person under age 21 submits to a chemical test and the test result indicates a BAC of .02 or more, the department must suspend his license for 3 months (or 6 months if the person, within the 5 years preceding the violation of this section, has been convicted of DUI).

Additionally, the bill provides that a test may not be administered or samples taken unless the person has been informed in writing that he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least 6 months if he refuses to submit to the tests and that his refusal may be used against him in court. The person must be informed that his privilege to drive will be suspended for at least 3 months if he takes the test or gives the samples and has an alcohol concentration of .02 or more; that he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense; he has the right to request an administrative hearing within 10 days of the issuance of the notice of suspension; and that he must enroll in an Alcohol and Drug Safety Action Program (ADSAP) within 10 days of the issuance of the notice of suspension.

The person may obtain a temporary alcohol restricted license, which allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing, or the final decision or disposition of the matter (this license must be obtained within 10 days of the



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issuance of the notice of suspension). If the person does not ask for the administrative hearing within the 10 days, he waives his right to the hearing and his suspension must not be stayed. At the hearing, if the suspension is upheld, the person's driver's license must be suspended; if the suspension is overturned, the person must have his driver's license reinstated and is not required to complete ADSAP.

The bill also states that it is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's mental and physical abilities are materially and appreciably impaired. If a person's alcohol concentration is .08 or more, it may be inferred that the person was under the influence of alcohol (the effective date for this provision would be January 1, 2001 - the current provision states that it may be inferred that a person was under the influence of alcohol if his BAC is .10). The bill requires video taping at both the incident site and the breath test site, and the bill creates a study committee to examine state law concerning minibottles and alcoholic liquor.

The full committee also amended and passed H.4805, which concerns the release of sex offender registry information to the public. The bill provides that a person may request a list of registered sex offenders residing in a city, county, or zip code zone or a list of all registered sex offenders within the State from SLED. A person may request information regarding a specific person who is required to register under this article from SLED if the person requesting the information provides the name or address of the person about whom the information is sought. SLED must provide the person making the request with the full names of the requested registered sex offenders, any aliases, any other physical identifying characteristics, each offender's date of birth, a current home address, the offense for which the offender was required to register, and the date, city, and state of conviction.

The bill also adds an additional requirement for offenders determined to be sexually violent predators. While current law requires a person required to register to do so annually, this bill requires a person adjudicated as a sexually violent predator to verify registration and be photographed by the sheriff's department in the county in which he resides every 90 days. The bill also addresses the release of information about juveniles (for certain offenses, the information concerning juveniles must be released to the public; for lesser offenses, the information must be made available, upon request, only to victims, schools, day care centers, and to organizations that primarily serve children).

A person who commits a criminal offense using information from the sex offender registry disclosed to him, upon conviction, must be punished as follows: for a misdemeanor offense, the maximum fine prescribed by law for the offense may be increased by not more than \$1,000 and the maximum term of imprisonment prescribed by law for the offense may be increased by not more than 6 months; for a felony offense, the maximum term of imprisonment prescribed by law for the offense may be increased by not more than 5 years.

The Judiciary Committee amended and gave a favorable report on H.4971. This bill requires the Department of Social Services (D.S.S.) to provide notice of a hearing concerning child custody or protective services to the foster parent, the preadoptive parent, or the relative who

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is providing care for a child. Providing notice does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action. The bill specifies when reasonable efforts must be made and when they may be terminated in working with families and children and specifies the conditions under which D.S.S. must initiate or join in a proceeding for termination of parental rights. The bill prohibits the placement of a child in foster care with a person who has pled guilty or nolo contendere or who has been convicted of a felony drug-related offense under the laws of this State. The bill states that the family court may order the termination of parental rights upon a finding that the child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. Parental rights may be terminated if the physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person, criminal domestic violence, criminal domestic violence of a high and aggravated nature, or the common law offense of assault and battery of a high and aggravated nature.

The Judiciary Committee amended and passed H.4446, which concerns copies and reproduction of bank records related to education loans and their admissibility in court. The bill states that an adequate copy of the original promissory note, check, draft, or record must be treated as an original record for the purpose of its admissibility into evidence, provided that the original document otherwise qualifies as a business record pursuant to the S.C. Uniform Business Records as Evidence Act or the appropriate state or federal rules of evidence. The amended bill deletes the requirement that a custodian or other qualified witness certify that the printed reproduction is a true and correct copy of the original.

The Judiciary Committee amended and passed H.3714, concerning the family court's authority to grant a name change (see House Week in Review).

### LABOR, COMMERCE AND INDUSTRY

The Labor, Commerce and Industry Committee met on Tuesday, April 21, and reported out three bills. The committee gave a report of favorable with amendment to S.893, "The Assistive Technology Warranty Act." This bill provides for the manner in which assistive technology devices (wheelchairs, prosthetics, hearing aids, voice synthesizers, braille printers, etc.) shall be marketed, repaired, maintained, and replaced, if required. The bill provides that a manufacturer who, directly or indirectly, sells an assistive technology device, which costs in excess of three hundred dollars, must furnish the consumer with a written warranty that is at least one year in duration, and which, at minimum, guarantees that there are no defects in parts or performance. In the absence of an express written warranty, the assistive technology device shall be considered to have been expressly warranted by the manufacturer just as if the manufacturer had explicitly furnished the warranty as specified in the legislation. The amendment approved by the committee changes the effective date so as to affect devices sold or leased after January 1, 1999.



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The committee gave a report of favorable with amendment to S.442. The amendment approved by the committee completely replaces the bill. The legislation approved by the committee adds credit cards to the acceptable methods of payment of county taxes, in counties which approve payment of tax bills by credit card. If the county chooses to allow payment of taxes by credit card, a surcharge must be imposed upon the payor which must be equal to or less than the administrative fee imposed upon the county by the credit card company. Such surcharges are mandatory and nonrefundable.

The committee gave a favorable report to H.3685 which provides a definition for products which may be lawfully labeled and sold as "peat" and establishes penalties for selling products misrepresented as peat. The legislation targets the practice of selling as peat, a product in which filler materials have been added to pure peat, defined as "partially carbonized vegetable tissue formed by partial decomposition of various plants in water." An individual who violates the provisions is guilty of a misdemeanor, punishable with a five hundred dollar fine or ninety days imprisonment.

The committee returned to the Business and Commerce Subcommittee H.4480 and H.4772. H.4480 authorizes businesses to request potential employees to provide Federal Bureau of Investigation ( FBI ) or State Law Enforcement Division ( SLED ) criminal background checks conducted at the expense of the job applicant. H.4772 authorizes the granting of a business license to a private personnel placement service conducted in a residence, where such activity is not prohibited by federal, state, or local laws or zoning ordinances.

### MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full Medical, Military, Public and Municipal Affairs Committee met Tuesday, April 21 and reported favorable on S.963 and H.4904.

S.963 amends the statutory definition of a health care facility to exclude kidney disease treatment centers, including freestanding hemodialysis centers, from the Certificate of Need process. Health care facilities must apply for a Certificate of Need from the Department of Health and Environmental Control (DHEC) before constructing a new facility or modifying an existing facility and before any expenditure or acquisition is made for a health care facility greater than the amounts prescribed by DHEC regulations. This part of the bill is identical to H.4364 that the 3M Committee approved, the House passed in February, and is pending second reading on the Senate calendar.

S.963 also adds outpatient methadone treatment facilities to the list of health care facilities required to obtain a Certificate of Need from DHEC. The bill prohibits DHEC from issuing a Certificate of Need for methadone treatment facilities until the agency promulgates licensure standards. Facilities licensed as of January 1, 1997 are not required to obtain a Certificate of Need. This part of the bill is similar to H.4502 that the 3M Committee approved, the House passed on March 25, and is pending in the Senate Medical Affairs Committee. In addition, S.963 amends the current exemption from the Certificate of Need process for infirmaries used by educational and penal institutions.

H.4904 expands the definition of the term "Children and adolescence in need of mental health treatment" to cover children and adolescents between the ages of 18 and 20 if they are clients of, committed to the custody of, or in the legal custody of a state agency. Now, "Children and adolescence in need of mental health treatment" means children and adolescents under the age of 18 in a residential treatment facility. For adolescents at the Department of Juvenile Justice (DJJ) who are transferred to the Department of Mental Health (DMH) for treatment, DMH is responsible for providing appropriate out-of-home treatment sites if the adolescents remain committed to DJJ. H.4904 is now a 3M Committee bill. The new bill number is H.5073.

### WAYS AND MEANS

The Ways and Means Committee gave a report of favorable with amendment to H.3826. This bill requires that, to the extent that the General Assembly appropriates funds for the use of veterans' organizations, it must appropriate funds for the use of the Vietnam Veterans of America, Inc., in a like amount and under the same conditions. The bill also requires that the appropriation for the Vietnam Veterans of America, Inc. must be in addition to amounts previously appropriated for other veterans' organizations. The committee amended the bill to require that the provisions of the bill begin in Fiscal Year 1999-2000.

The committee gave a favorable report to S.477. This bill adds a section to the *SC Code*, providing that if the right to receive retirement income by a taxpayer allowed a specified retirement income deduction was earned by the taxpayer while residing in another state which imposed state income tax on the employee's contributions, a credit is allowed against the taxpayer's South Carolina income tax liability in an amount sufficient to offset the taxes paid the other state. This credit must be claimed over the taxpayer's lifetime, and the SC Department of Revenue must prescribe the method of claiming the credit.

The committee gave a favorable report to H.4959. This bill eliminates a taxpayer's right to elect to defer the annual retirement income deduction until the year in which the taxpayer reaches age 65. The bill allows an annual deduction of up to \$3,000 of retirement income and up to \$10,000 beginning in the year the taxpayer reaches age 65. The bill also provides that beginning for the year in which a taxpayer reaches age 65, the taxpayer is allowed an annual deduction of \$11,500 reduced by the retirement income deduction. The bill also provides for claiming this deduction on joint returns.

The committee gave a report of favorable with amendment to H.4853. This bill clarifies the percentage of exemption allowed for motor fuel purchased for travel on the highway and for operation of equipment. The bill also clarifies what is considered to be "power take-off equipment" for purposes of exemption from tax on motor fuel. The bill provides that kerosene used as heating oil or used in equipment not licensed as a motor vehicle qualifies for the exemption from tax on motor fuel, as does taxable motor fuel used in "transportation of students for state-funded institutions of higher learning." The bill also makes technical corrections and repeals provisions of the *SC Code* that are no longer applicable relating to temporary permits and registration cards for motor carriers. The committee struck the subsection of the bill regarding the percentage of exemption allowed for motor fuel purchased



for travel on the highway and for operation of power takeoff equipment. The committee also revised wording in the bill to clarify that the exemption is also for motor fuel purchased for transportation of students by state-funded institutions of higher learning.

The committee gave a report of favorable with amendment to H.4570. This bill provides that the purchase price paid at the end of the term of a consumer automobile lease if the sales tax has already been paid on the lease, is not included in the definition of "gross proceeds of sales," and is not subject to sales tax. The committee amended the bill by striking all after the enacting words and inserting a provision that the purchase price paid by the lessee during or at the end of the term of a consumer automobile lease pursuant to the provisions of the lease to the extent that the sales tax has already been paid on the lease pursuant to current law, is not included in the definition of "gross proceeds of sales," and is not subject to sales tax. The amendment also provides that when the lessee purchases the automobile during or at the end of the term of the lease, any sales tax remaining to be paid by the lessee on the purchase price is due and payable at that time.

The committee gave a report of majority favorable with amendments, minority unfavorable, to S.547. This bill creates the SC Community Development Financial Institutions Commission (the commission), whose purpose is to identify and respond to community needs for capital, credit, and development services in the absence of, or as a complement to, services provided by other lenders. The stated intent of the bill is to facilitate the restoration and maintenance of South Carolina's communities which are facing social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment. The commission is empowered to certify entities as community development financial institutions and as community development corporations, and to make grants to such certified entities using funds from the General Assembly or other available funds. The bill delineates the powers of the commission and creates a governing body of seven members. The bill defines a "community development financial institution" and a "community development corporation" for purposes of certification by the commission, and provides that the commission will establish and implement criteria for grants made to community development corporations. The bill also provides to taxpayers, under certain conditions, a credit against certain tax liability, of 50% of all amounts invested in a certified community development financial institution or community development corporation. The bill specifies that the commission shall cease to exist on July 1, 2003, unless further authorized by the General Assembly. The committee amended the bill by adding wording that the General Assembly finds that community development corporations have proven their ability to identify and respond to community needs and manage community assets for local community and economic development, and the committee accordingly amended the name of the commission created by the bill to the SC Community Development *Corporations* and Financial Institutions Commission (the commission). The committee also amended the bill to allow the commission to use funds appropriated by the General Assembly for *loans*, as well as for grants as provided in the original bill. The committee also amended the bill regarding appointment of the commission's governing body, by deleting the requirement for advice and consent of the Senate on certain of these appointees, and by deleting a provision requiring that the governing body include "three members appointed by the Governor," and inserting a provision requiring that the governing body include "three members representing the community economic development industry as described by the National Congress for Community Economic Development, appointed by the Governor." The committee also



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amended the definition of "community development corporation" to include (in addition to other definitions provided in the bill) a nonprofit corporation which does not provide credit, capital, or other assistance in an amount greater than *twenty-five thousand dollars* at any one time or in any one transaction. The original bill set this amount at *five thousand dollars*. The committee also added definitions and clarifying language (regarding community development corporations) for the terms "invest" and "low-income." The committee also amended a provision in the bill which allows the commission to provide or contract for provision of technical support to assist community development corporations in implementing their projects. The committee amended this provision so as to *require* that the commission contract with an appropriate entity or the SC Association of Community Development Corporations to provide technical support to assist community development corporations served under the bill in developing their organizational capacity and implementing their projects. The committee also amended from 4/1/98 to 4/1/99, the date on which, if the total amount of tax credits which may be claimed by all taxpayers exceeds the total amount of tax credits authorized by the bill, then the credits must be determined on a *pro rata* basis. The committee also amended the bill to provide that community development financial institutions or community development corporations for which an investment may be claimed as a tax credit under this bill must report all investments made prior to 4/1/99, to the commission by 4/1/99, and the commission must then inform them of the total of all investments in all institutions and corporations as of 4/1/99. The date in each of these instances in the original bill was 4/1/98. The committee also revised the bill to provide that the total amount of tax credits which may be allowed by the Department of Revenue pursuant to this bill shall not exceed five million dollars, respectively, for fiscal years *1999-2000 and 2000-2001*. The relevant dates in the original bill were fiscal years *1997-98 and 1998-99*. The committee struck a subsection in the bill which allowed a taxpayer, under certain conditions, to transfer or assign certain tax credit provided in the bill. The committee also reduced the allowed tax credit from 50% to 33% of a taxpayer's investment in a community development corporation or a community development financial institution, up to a maximum of one million dollars for all taxable years. The committee also amended the bill to provide that the total amount of credits which may be allowed by the Department of Revenue (DOR) shall not exceed \$1.5 million in a community development financial institution for fiscal year 1999-2000 and each fiscal year after that until the total aggregate amount of \$9 million is reached; and the total amount of credits which may be allowed by the DOR shall not exceed \$500,000 in a community development corporation for fiscal year 1999-2000 and each fiscal year after that until the total aggregate amount of one million dollars is reached. The original bill provided that the DOR may allow for a total amount of credits not to exceed \$5 million, respectively, for the fiscal years 1997-98 and 1998-99. The committee also revised the effective date for the tax credit provisions of the bill from tax years beginning after 1997 to tax years beginning after 1998.

The committee gave a report of favorable with amendment to H.3069. This bill provides a \$15,000 maximum, nonrefundable tax credit for a taxpayer's cash investment in a qualified South Carolina film enterprise. The bill also provides a maximum \$100,000, nonrefundable tax credit for construction and equipping of a motion picture production facility in South Carolina in which the taxpayer has an ownership interest. The committee amended the bill by revising the tax credit offered in the bill to 33% (but not more than \$15,000) of a taxpayer's investment in a qualified SC motion picture project. The tax credit in the original bill was 50% (but not more than \$15,000) of a taxpayer's *cash investment in a qualified SC film enterprise*. The committee



also amended the bill to provide that the credit is allowed for a taxable year beginning in the calendar year the project is registered with the SC Film Office as a qualified SC motion picture project. The original bill provided that the credit is allowed for a taxable year beginning in the year the project is registered as a *qualified film enterprise* pursuant to criteria established in the original bill. The committee struck those criteria. The committee also amended the bill to provide a nonrefundable 33% tax credit, under certain conditions, for the construction or conversion and equipping of a motion picture production facility in SC in which the taxpayer purchases an ownership interest with the taxpayer's investment. The original bill provided a 50% tax credit (but not more than \$100,000) in the construction and equipping of a motion picture production facility in SC in which the taxpayer has an ownership interest. The committee also revised the bill so as to: allocate credits allowed for construction and equipping of certain production facilities to partners, limited liability company members, and subchapter "S" corporation shareholders; limit the reduction of the taxpayer's total SC income tax liability as a result of these credits and any other credits, to 50%; provide definitions for '*investment*,' '*motion picture company*,' '*motion picture production facility*,' '*motion picture project*,' and '*qualified SC motion picture project*.' The committee also added a provision requiring the Department of Revenue to report on all tax credits earned pursuant to this bill, and requiring the Board of Economic Advisors to conduct a cost-benefit analysis of these credits after the first three years the credits are allowed and report its findings to the House Ways and Means Committee and to the Senate Finance Committee. The committee also changed the effective date of the bill.

The committee gave a report of favorable with amendments to H.4682. This joint resolution proposes an amendment to the *SC Constitution* authorizing a state-conducted lottery, with the revenues used to provide scholarships to in-state residents to attend South Carolina post-secondary institutions. The joint resolution provides that the criteria for the scholarships would be provided by the General Assembly, but must include a minimum "B" average in high school and a minimum cumulative 3.0 grade average while attending the post-secondary institution. The committee amended the joint resolution to provide that not more than 15% of lottery revenues may be used for operational expenses; not less than 50% of the revenue must be used for prizes; and the remaining funds must be used to fund higher education scholarships, with any funds remaining after scholarship program requirements are met to be used for public school construction and renovation. The committee also struck the "B"/3.0 grade criteria language and revised the words in the final paragraph of the referendum ballot by substituting the word "*question*" with the word "*lottery*," so that the paragraph reads, "Those voting in favor of the *lottery* shall deposit a ballot with a check or cross mark in the square after the word 'Yes', and those voting against the *lottery* shall deposit a ballot with a check or cross mark in the square after the word 'No.'"

The committee gave a report of favorable with amendment to H.4378. This comprehensive bill was reported favorable with amendment from the House Judiciary Committee, amended on the House floor, and then committed to the House Ways and Means Committee. The bill, as amended by the House, brings magistrates under the SC Court Administration as part of a unified court system and requires magistrates to have a two year associate degree as of 5/1/2002 and a four year baccalaureate degree by 5/1/2006 (although a grandfathering provision exempts any magistrate serving on 7/1/98 from these provisions). The bill also requires magistrates to observe 10 trials before presiding over a trial. Magistrates would be



paid by the state through the SC Court Administration, with three base categories for salaries, depending on the population of the county where the magistrate is located. Magistrates in counties of 150,000 or more would be paid 60% of a circuit court judge's salary; for counties between 50,000 and 149,000, magistrates would be paid half of a circuit judges salary; and for counties below 50,000, magistrates would be paid 40% of a circuit court judge's salary. Additionally, magistrates would not be paid 100% of the base salary until after four years in office. The bill includes a provision requiring the SC Court Administration to review and approve the county's designation of full and part-time magistrates, and retains a provision in current law that allows a part-time magistrate to be paid an hourly wage. The bill also increases the civil action filing fee for actions where damages or the amount claimed exceeds \$1000 from \$25 to \$50, increases the fee for landlord-tenant cases from \$10 to \$40, and raises the costs charged by the court for writing bad checks from \$20 to \$40. The committee amended this bill by striking a section which would make magistrates state employees and eligible for participation in the SC Police Officers Retirement System. The committee amendments also include, but are not limited to: raising the filing fee on landlord-tenant proceedings from the current \$10 to \$20 (the House-amended bill raised this fee to \$40, with half the fee collected being used to fund magistrates' salaries and benefits); raising the fee for issuing a summons and a copy for the defendant, and for giving judgement with or without a hearing in civil actions from \$25 to \$45 (House-amended version of the bill raised this fee to \$50, with certain exceptions, with a portion of the fee to be used to fund magistrates' salaries and benefits); raising the administration fee liability for the party applying for a warrant to a maximum \$41 if the case is dismissed for want of prosecution (current law provides a maximum \$20 liability); and raising a defendant's liability for court costs for drawing and uttering a fraudulent check to a maximum of \$41 (maximum under current law is \$20; House-amended maximum amount was \$40). Also, the committee amended the bill to require that magistrates' base salary increases must be provided by the county in an amount equivalent to the pay increase percentages for state employees, plus any legislatively-provided bonuses provided through the annual appropriations act. The House-amended bill tied such increases to circuit judges' salary increases.

## BILLS INTRODUCED IN THE HOUSE

### EDUCATION AND PUBLIC WORKS

#### **S.1188 SC SCENIC HIGHWAY DESIGNATION** Sen. Passailaigue

This bill, which is similar to **H.5026** (see 4/21/98 *Legislative Update* for summary), designates a certain portion of SC Highway 61 in Charleston County as a SC Scenic Byway. The bill also provides that Ashley River Road Scenic Byway is subject to certain regulations promulgated by the SC Department of Transportation and the SC Scenic Highway Committee for Scenic Byways. The bill directs the Department of Transportation to install appropriate markers and signs to implement this designation, and the bill prohibits all off-premises outdoor advertising on that portion of Highway 61 which is designated as a scenic byway.



## JUDICIARY

### **H.5071 SEX OFFENDER'S DRIVERS LICENSE Rep. Limehouse**

This bill requires a person registered as a sex offender to tender his driver's license to the sentencing court, which shall issue him a temporary driver's license that directs him to report to the Department of Public Safety and obtain a replacement driver's license with a 'Y' restriction printed on its face. This restriction indicates that the person is a sex offender.

### **S.1111 DESTRUCTION OF CRIMINAL RECORDS Sen. Bryan**

This bill provides that if a person is charged with an offense and the charge is discharged or dismissed or if the person is found to be not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed upon notification to the law enforcement agency by the magistrate. No evidence of the record pertaining to the charge would be retained by a municipal, county, or state law enforcement agency, and a court order shall not be required to destroy the arrest and booking record, files, mug shots, and fingerprints of the person.

The bill also provides that if a juvenile is charged with an offense and the charge is discharged or dismissed, or if the juvenile is not adjudicated delinquent, all records including mug shots and fingerprints maintained by law enforcement must be destroyed upon notification to the law enforcement agency by the clerk of court. A court order shall not be required to destroy these records.

## LABOR, COMMERCE AND INDUSTRY

### **H.5064 TRANSIENT BUSINESSES Rep. Cooper**

This bill provides that no individual may offer for sale at a transient or temporary business the following items: baby food; drugs, cosmetics, and medical services; a product which has an expiration date. Such items may be sold only by an authorized manufacturer's or distributor's representative possessing on his person written proof of authorization for public retail sales from the manufacturer or distributor. An unauthorized individual who sells such items, or an individual who presents fraudulent proof of authorization, is guilty of a misdemeanor, punishable with a fine of not more than one hundred dollars. Such penalties are in addition to any other pertinent penalties provided by law. A clerk of court must report each conviction, guilty plea, or plea of *nolo contendere* for the misdemeanor to the State Department of Consumer Affairs which must maintain a record of the convictions and pleas which must be made available to the public upon request.

## WAYS AND MEANS

### **H.5062 PARTICIPATION IN STATE HEALTH/DENTAL PLANS Rep. H. Brown**

This bill provides that a person covered by the state health and dental insurance plans with at least twenty years retirement service credit with a state-covered insurance group who terminates employment before eligibility for retirement under a state retirement system is

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eligible for the insurance plans effective on the date of retirement under a state retirement system, if the last *three* years of employment are consecutive and in a full-time permanent position with a state-covered insurance group. Current law requires in such a circumstance that the last *five* years of employment are consecutive and in a full-time permanent position with a state-covered insurance group.

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The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page ([www.lpitr.state.sc.us](http://www.lpitr.state.sc.us)) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

**SPECIAL NOTE:** A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1997-98. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.